

potential petitioner has no way of knowing – prior to expending the substantial cost and resources required to bring a complaint – whether the Commission will even consider its claims cognizable under Section 201. Given the lack of guidance and the numerous variables involved in roaming, as well as the cost of pursuing a matter that would essentially be a “shot in the dark,” filing a Section 201 complaint is effectively foreclosed as a viable option for most carriers.

With regard to complaints regarding Section 202, which would involve allegations that a carrier is unlawfully discriminating by failing to enter into a roaming agreement, a petitioner must show that it is “similarly situated” with the companies the carrier is favoring. This “similarly situated” requirement gives carriers substantial room to allege differences between their chosen roaming partners and the petitioner, again raising the specter of unduly protracted, complicated, and uncertain litigation. Moreover, as with Section 201, it may not even be possible for a potential petitioner to make a cognizable claim of unjust or unreasonable discrimination regarding roaming when there is no clear automatic roaming obligation in the first place. Complaints under Section 202 are thus also effectively foreclosed as an option for most carriers.

In addition to the formidable substantive obstacles described above, the process of pursuing a complaint under Section 208 is cumbersome, unpredictable, and imposes a tremendous burden on the party seeking relief. The petitioner faces significant evidentiary burdens from the outset, requiring substantial time and resources to be expended simply to prepare the complaint. Indeed, the petitioner’s ability to prepare a thorough complaint often requires access to information that may only be available through discovery (even though the opportunity to conduct meaningful discovery is limited).

In light of the forgoing, SouthernLINC Wireless believes that, if the Commission intends to rely on Sections 201, 202, and 208 to address roaming abuses, the complaint process must be reinforced with specific evidentiary presumptions regarding roaming. If this is done, the Section 208 process could potentially serve as an effective supplement to the adoption of an automatic roaming obligation. These proposed modifications are discussed in more detail below in Section IX.B. of these comments. However, even with these modifications, the Section 208 complaint process itself would still be an ineffective remedy absent an automatic roaming rule.

IX. RECOMMENDED MEASURES FOR ADDRESSING THE ROAMING ISSUE

As demonstrated throughout these comments, U.S. consumers and the public interest are harmed if automatic roaming for all mobile wireless services is not available, and market forces alone have thus far failed to make such automatic roaming available. Therefore, in order to ensure the development and availability of automatic roaming services in a competitive CMRS market and to ensure that all U.S. consumers have equal access to wireless services, SouthernLINC Wireless urges the Commission to adopt a three-prong approach:

1. The Commission should adopt a rule requiring all CMRS carriers to provide automatic *inbound* roaming for all services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions.
2. The Commission should streamline its Section 201/202 complaint process and adopt appropriate evidentiary presumptions reflecting the public interest need for roaming and the goals of the automatic roaming obligations. The Commission should also adopt appropriate procedural and decisional time limits to ensure that its actions and decisions under this process are sufficiently timely to provide appropriate redress in the fast-moving wireless market.
3. The Commission should give teeth to its rules, orders, decisions, and policies on roaming issues by adopting appropriate enforcement measures, including, but not limited to, forfeitures and enforceable orders compelling carriers to enter into good faith negotiations.

In conjunction with this approach, the Commission should also adopt an underlying presumption that, where a carrier charges wholesale roaming rates that exceed its own lowest prevailing retail rates, these roaming rates would presumptively be considered unjust and unreasonable, thereby establishing a simple, effective, and efficient mechanism for assessing, adjudicating, and remedying roaming issues and disputes.

Together, these proposals are designed to ensure the availability of automatic roaming services through the most efficient and least intrusive means possible, striking an appropriate balance between the public interest need for automatic roaming for all mobile wireless services and the need for carriers for sufficient flexibility to make appropriate business decisions in a competitive market.

SouthernLINC Wireless emphasizes that it still believes that the best way to make automatic roaming available is through good faith commercial negotiation between the parties, and to the extent parties can reach reasonable roaming agreements through such good faith negotiations, there would be no need for the Commission to invoke these measures. Yet, SouthernLINC Wireless' own experience has already demonstrated that certain carriers with substantial market power have to this day exhibited anything but good faith with respect to roaming and are still actively refusing to roam with non-affiliated carriers. As a consequence, the Commission must ensure that it has the necessary tools in place to prevent this from becoming an even greater industry-wide problem affecting even more consumers.

A. Adoption of an Automatic Roaming Rule

SouthernLINC Wireless urges the Commission to adopt a rule that would require all CMRS carriers to make inbound automatic roaming available for all mobile wireless services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions. This rule would ensure that all U.S. consumers have

equal access to wireless services and would address the problem of both current and future market failure in the availability of roaming for mobile wireless services. This rule would also confer substantial economic and non-economic benefits to the public, such as the promotion of public safety and national security through interoperability and the establishment of a reliable nationwide communications infrastructure.

At the same time, this rule would serve to promote the ongoing development and deployment of new and innovative wireless services throughout the country and foster increased competition even in the face of industry consolidation.

1. “Inbound Automatic Roaming”

For purposes of this proposed rule, “inbound” automatic roaming refers to the practice of a carrier allowing customers of other carriers to roam on its network. In other words, if Carrier A wants its customers to be able to roam on Carrier B’s network, then Carrier B must provide automatic roaming to Carrier A’s customers at reasonable rates and on reasonable and nondiscriminatory terms and conditions. However, Carrier B would not be required to enter into an agreement enabling its own customers to roam on Carrier A’s network. This approach most fairly balances the needs and priorities of CMRS carriers of all sizes and strikes an appropriate balance between the public interest need to ensure consumer access to roaming and the ability of carriers to make appropriate business decisions in a competitive market.

2. “All Mobile Wireless Services”

In light of both current market conditions and the way the wireless market is expected to develop, automatic roaming should be available for all mobile wireless services, not just for basic voice service.

As previously discussed in these comments, commercial mobile radio services consist of far more than just basic interconnected voice – a fact that the Commission itself has

acknowledged on more than one occasion.⁶⁶ Data, PTT, and other wireless services have become an increasingly important component of the CMRS market and are now provided by many CMRS carriers. These services are predominantly provided in conjunction with basic voice as part of a bundle of services (the provision of these services on a stand-alone basis is becoming increasingly rare), and their use and economic impact are becoming increasingly significant.⁶⁷ As demonstrated throughout these comments, the needs and interests of consumers – including public safety, government, and public service subscribers – can only be met if automatic roaming is made available for all wireless services that a carrier provides.

3. Reasonable and Nondiscriminatory Rates, Terms, and Conditions

The requirement that automatic roaming be made available at reasonable and nondiscriminatory rates and on reasonable and nondiscriminatory terms and conditions is essential to ensuring that such services will actually be available to consumers. At the same time, this standard would not impose any additional burden on carriers, but it would serve to facilitate good faith commercial negotiations between carriers regarding roaming.

As described in Section VI of these comments, a simple and straightforward method for determining whether a carrier's roaming rates are reasonable for purposes of this rule would be to compare these rates to the same carrier's lowest prevailing retail rates. Specifically, if a carrier charges roaming rates that exceed the lowest prevailing retail rates that it charges its own subscribers, these roaming rates would be considered presumptively unreasonable.

⁶⁶ / See, e.g., *Sprint Nextel Merger Order* at ¶ 42 (citing the *Cingular Merger Order*) (“First, we continue to believe, consistent with the *Cingular-AT&T Wireless Order*, that most mobile data services likely are sold as add-ons to mobile voice services rather than as separate data-only service offerings. Therefore, we believe that nearly all mobile data subscribers are also mobile voice subscribers using the same phone number. Second, a variety of these mobile data add-ons are offered by all nationwide carriers and some smaller regional carriers.”).

⁶⁷ / See, e.g., Ovum Report (discussed in Section IV.E.2. of these comments).

Using the process recommended in the McAfee Report (and described in detail in Section VI.A. of these comments), the Commission, as well as carriers themselves, would be able to make the necessary comparison using publicly available retail price information and without needing to engage in any complex cost analysis or studies. This approach is fair, economically sound, minimally intrusive, and would be easy to administer. This approach also allows carriers to recognize a healthy return on roaming that would allow them to recover any implementation costs they may incur as well as a reasonable profit, while also acting as a check on a carrier's ability to unfairly exercise market power.

Similarly, there are certain roaming practices that are implicitly unreasonable and/or discriminatory, such as territorial exclusions on where roaming will be allowed on its network, restrictions on the type or scope of services for which roaming is available, or outright refusals to provide any roaming service whatsoever. The existence of such practices presumptively demonstrate that a carrier's roaming terms and conditions are unjust, unreasonable, or discriminatory and should therefore result in a threshold finding that they violate the automatic roaming rule.

B. Streamlining of the Section 201/202 Complaint Process

As the Commission discussed in the *NPRM*,⁶⁸ existing law provides a means for addressing carrier-specific roaming issues through Sections 201, 202, and 208 of the Communications Act, and the principles underlying the statutory mandates of Sections 201 and 202 remain highly relevant to the wireless market, especially with regard to roaming.

SouthernLINC Wireless believes that, in addition to adopting an automatic roaming rule, the Commission needs to revise and streamline its procedures for addressing complaints

⁶⁸ / *NPRM* at ¶ 34.

regarding unreasonable and discriminatory roaming practices and behavior in violation of Sections 201 and 202 of the Communications Act. Such a revised complaint process would both supplement and support the automatic roaming rule discussed above, providing the Commission with sufficient flexibility to develop an appropriate remedy in a given case, depending on whether the issue at hand is specific to a particular carrier-to-carrier relationship, specific to a particular carrier's roaming practices in general, or symptomatic of a more widespread problem in the wireless sector itself.

SouthernLINC Wireless recommends the following revisions to the Section 201/202 complaint process:

- The adoption of an evidentiary presumption in roaming cases that automatic roaming is in the public interest and (as set forth in the automatic roaming rule) must therefore be made available on a reasonable and nondiscriminatory basis;
- The adoption of appropriate evidentiary presumptions regarding the reasonableness of roaming rates, terms, and conditions (*e.g.*, wholesale rates that exceed retail rates are presumed to be unreasonable);
- The adoption of an evidentiary presumption that automatic roaming should be available for all mobile wireless services, including voice, data, PTT, etc.; and
- Automatic placement of all roaming complaints on the Enforcement Bureau's Accelerated Docket in order to provide for a sufficiently timely resolution of the complaint.

The essential purpose of these presumptions is to expedite the complaint process in a way that recognizes the important public interest in the availability of automatic roaming for all mobile wireless services, while also recognizing that there may be circumstances when the provision of such services is either not possible or unduly burdensome. Therefore, these presumptions — all of which are, of course, rebuttable — are based on carriers' obligations as set forth in the proposed automatic roaming rule described above.

Under the first presumption – that automatic roaming is in the public interest and must be made available on a reasonable and nondiscriminatory basis – a potential petitioner would be required to show that a technologically compatible carrier is refusing to provide automatic roaming services to the petitioner's customers on a reasonable and nondiscriminatory basis or is refusing to provide automatic roaming altogether. Carriers using the same or backwards-compatible air interfaces would be presumed to be technologically compatible, and technological compatibility would be further presumed where the respondent carrier has refused to enter into good faith negotiations regarding technical issues.

Under the next set of presumptions, a showing that meets the same reasonableness standard as described previously in these comments – *i.e.*, that the carrier's roaming rates exceed its lowest prevailing retail rates – would be considered *prima facie* evidence that these roaming rates are unreasonable. Terms and conditions that are more restrictive or more burdensome than those imposed on other carriers that receive roaming services from the respondent would also be presumed to be unreasonable and discriminatory.

As discussed previously these comments, commercial mobile radio services encompass not just voice, but also a broad range of other services, such as data and PTT, that are becoming an ever-increasingly important component of the CMRS market. The needs and interests of consumers can only be met if automatic roaming is available for all wireless services. Therefore, the Commission should presume that automatic roaming is available for any wireless service that a carrier offers to the public unless the respondent carrier can demonstrate in a specific case why a certain service cannot be made available to a specific requesting carrier.

Finally, the Commission should adopt procedures whereby all formal complaints involving roaming are automatically placed on the Enforcement Bureau's Accelerated Docket

under Section 1.730 of the Commission's Rules.⁶⁹ This would provide carriers experiencing problems in obtaining automatic roaming with a remedy that is sufficiently timely in light of the fast-moving CMRS market and minimize any harm to wireless consumers that may be caused by a carrier's roaming practices.

C. Adoption of Appropriate Enforcement Measures

As the Commission is well aware, any rules, policies, and processes are effective only if there is an adequate means of enforcing them, including penalties for violations. Therefore, in conjunction with the proposals set forth above, SouthernLINC Wireless urges the Commission to adopt appropriate enforcement measures that will serve to promote the availability of roaming for U.S. consumers and to discourage carrier behavior that unreasonably diminishes or constrains such access or otherwise harms consumers of wireless services.

SouthernLINC Wireless believes that the Commission should adopt procedures by which it could issue specific orders compelling carriers to conduct good faith negotiations for reasonable and nondiscriminatory roaming agreements. The Commission already has the authority to issue such orders under its obligations to enforce the provisions of the Communications Act, particularly the access and nondiscrimination provisions of Sections 201 and 202, and such orders would be the most efficient and effective means of enforcing roaming access, as well as the most efficient use of Commission resources.

Of course, not all roaming issues may be addressable through good faith negotiations, and situations may arise where, even with an order to compel in place, a carrier still refuses to either enter into or to conduct negotiations in good faith. Such situations may require direct Commission intervention, such as ordering negotiations to take place subject to Commission

⁶⁹ / 47 C.F.R. § 1.730.

oversight. Although this approach is a rather drastic measure that one hopes that would rarely, if ever, have to be invoked, it is nevertheless necessary that the Commission at least have this option available to it.

The Commission should also adopt appropriate forfeitures for carrier actions and practices that inhibit or diminish consumer access to roaming, including (but not limited to) unreasonable roaming rates, terms, or conditions, or the denial of roaming access altogether. Although such forfeitures would be subject to the provisions set forth in Section 1.80(b) of the Commission's Rules,⁷⁰ these forfeiture amounts must also be sufficiently calculated and levied in such a way, such as accrual on a per-customer/per-day basis, that carriers cannot simply absorb these forfeitures as a cost of doing business. Carriers who are injured by another carrier's illegal roaming practices should also have the right to seek and obtain appropriate damages, further ensuring that the costs will outweigh any benefits that a carrier might recognize by engaging in unjust and unreasonable roaming practices.

Finally, if the Commission finds that the complained-of roaming practices have an anti-competitive intent or purpose, the total amount of any forfeiture or damages should be trebled. This level of punitive action would serve as an appropriate deterrent to practices that diminish or inhibit consumer access to roaming or otherwise harm wireless consumers.

X. CONCLUSION

The Commission has thus far taken the position that roaming issues are, in general, being sufficiently addressed by competitive market forces. However, the Commission has received numerous comments and submissions in various proceedings clearly indicating that this is not the case, and it has certainly not been SouthernLINC Wireless' experience. As discussed above,

⁷⁰ / 47 C.F.R. § 1.80(b).

Sprint Nextel and Nextel Partners – the only domestic carriers with whom SouthernLINC

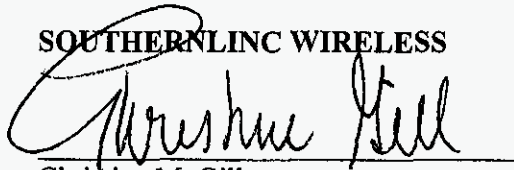
Wireless is able to roam – have consistently and repeatedly engaged in unreasonable roaming practices to the detriment of wireless consumers, particularly those who rely on the unique services and capabilities that can only be found on iDEN networks. As the Commission looks at competition in the CMRS market, it should be aware that there is already market failure for iDEN roaming and that serious questions remain regarding the availability of roaming for other platforms and services in the United States.

SouthernLINC Wireless urges the Commission to take immediate action to address these problems and to adopt the proposals set forth in these comments to ensure the development and availability of automatic roaming and to ensure that all U.S. consumers have equal access to mobile wireless services. SouthernLINC Wireless submits that these proposals strike an appropriate balance between the public interest need in the availability of automatic roaming for all mobile wireless services while still providing carriers ample flexibility to make appropriate business decisions in a competitive market.

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

SOUTHERNLINC WIRELESS



Christine M. Gill
David D. Rines
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096
T: 202.756.8000
F: 202.756.8087

Michael D. Rosenthal
Director of Legal and External Affairs
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 687.443.1500

Its Attorneys

Holly Henderson
External Affairs Manager
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 687.443.1500

Dated: November 28, 2005

CERTIFICATE OF SERVICE

I, Merline Wilkins, do hereby certify that on this 28th day of November, 2005, a copy of the foregoing comments of SouthernLINC Wireless in the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket no. 05-265, was submitted electronically to the Federal Communications Commission and served via electronic mail upon the following:

Chairman Kevin J. Martin
Federal Communications Commission
445th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

With Electronic Courtesy copies to:

Elias Johnson
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Kim Won
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

/s/ Merline Wilkins
Merline Wilkins

ATTACHMENT A

**Comments of SouthernLINC Wireless on the Sprint/Nextel
Merger, WT Docket No. 05-63**

(filed March 30, 2005)

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Applications of Nextel Communications,)	WT Docket No. 05-63
Inc., Transferor, and Sprint Corporation,)	
Transferee)	
)	
For Consent to Transfer Control of)	
Licenses and Authorizations)	
)	

To: The Commission

**COMMENTS OF
SOUTHERNLINC WIRELESS**

By:

Christine M. Gill
David D. Rines
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096
T: 202.756.8000
F: 202.756.8087

Michael D. Rosenthal
Director of Legal and External Affairs
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 687.443.1500

Attorneys for SouthernLINC Wireless

Dated: March 30, 2005

EXECUTIVE SUMMARY

Although SouthernLINC Wireless does not oppose the proposed merger transaction between Sprint and Nextel, SouthernLINC Wireless urges the Commission to give close and careful consideration to the potential impact of the proposed merger on roaming. As the Commission recognized in the *Cingular/AT&T Order*, the availability of roaming is an essential component of the CMRS market, and any assessment of whether a proposed merger or consolidation of CMRS carriers is in the public interest must necessarily consider the transaction's impact on the availability of roaming services for consumers of mobile telephony services.

This merger involves a distinct customer segment served by very few providers: namely, customers for interconnected voice and "push-to-talk" ("PTT") digital dispatch services based on the iDEN air interface platform. As the Commission noted in the *Cingular/AT&T Order*, there are numerous nationwide, local, and regional GSM and CDMA carriers. However, there are only three commercial iDEN carriers throughout the entire country: (1) Nextel, the only nationwide iDEN carrier; (2) Nextel's partially-owned affiliate Nextel Partners; and (3) SouthernLINC Wireless, a regional carrier that is the only iDEN carrier in the country not affiliated with Nextel.

As discussed in these Comments, SouthernLINC Wireless has had great difficulty over the years in negotiating a roaming agreement with Nextel or with Nextel Partners. To this day, SouthernLINC Wireless still has no roaming agreement with Nextel Partners and has only a limited, non-reciprocal arrangement with Nextel itself, for which SouthernLINC Wireless must pay high rates and which restricts the type of roaming services available to SouthernLINC Wireless customers.

In order to ensure that the proposed merger is in the public interest, *SouthernLINC Wireless* therefore believes that the Commission should, at a minimum, seek any necessary assurances from the Applicants or adopt appropriate safeguards to protect wireless customers by ensuring that these practices will not continue and that the merged Sprint-Nextel entity will engage in good faith negotiations for roaming at reasonable rates and on reasonable, non-discriminatory terms and conditions.

TABLE OF CONTENTS

	Page
I. ROAMING IS AN ESSENTIAL COMPONENT OF THE COMMISSION'S REVIEW OF THE PROPOSED SPRINT/NEXTEL MERGER.....	3
II. UNIQUE CHARACTERISTICS OF THE iDEN CUSTOMER BASE	7
A. Nextel Communications, Inc	9
B. Nextel Partners, Inc.....	9
C. SouthernLINC Wireless	10
III. SOUTHERNLINC WIRELESS' EFFORTS TO OBTAIN ROAMING WITH NEXTEL AND NEXTEL PARTNERS	11
IV. MARKET FORCES ALONE ARE NOT SUFFICIENT IN THIS CASE TO ENSURE ROAMING IS AVAILABLE TO ALL WIRELESS CUSTOMERS.....	14
V. CONCLUSION	18

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Applications of Nextel Communications, Inc., Transferor, and Sprint Corporation, Transferee)	WT Docket No. 05-63
)	
For Consent to Transfer Control of Licenses and Authorizations)	
)	

To: The Commission

COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") hereby submits its comments on the above-captioned transfer applications.¹ Although SouthernLINC Wireless does not oppose the grant of these applications, SouthernLINC Wireless urges the Commission to give close and careful consideration to the impact of the proposed Sprint-Nextel merger on roaming, particularly with respect to the availability of roaming for smaller regional wireless carriers.

As an initial matter, SouthernLINC Wireless is concerned that, in the above-captioned applications, the Applicants barely mention their current roaming arrangements and are completely silent as to their intentions regarding their roaming partners following

¹ / See Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63: Pleading Cycle Established, *Public Notice*, DA 05-502, released February 28, 2005.

consummation of the merger.² By contrast, the issue of roaming was extensively and explicitly addressed in the merger applications of Cingular and AT&T Wireless and of ALLTEL and Western Wireless,³ and was an essential component of the Commission's ultimate approval of the Cingular/AT&T Wireless merger.⁴

As the Commission recognized in the *Cingular/AT&T Order*, the availability of roaming is an essential component of the CMRS market, and any assessment of whether a proposed merger or consolidation of CMRS carriers is in the public interest must necessarily consider the transaction's impact on the availability of roaming services for consumers of mobile telephony services.⁵

As set forth below, SouthernLINC Wireless' concern is heightened by the great difficulty it has had in negotiating a roaming arrangement with Nextel and its partially-owned affiliate Nextel Partners. To this day, SouthernLINC Wireless, their only iDEN-based competitor in the United States, has no roaming agreement with Nextel Partners and only a limited, non-reciprocal arrangement with Nextel itself, for which SouthernLINC Wireless must pay rates that substantially exceed those typical in the industry.

² / See *Applications of Nextel Communications, Inc. Transferor, and Sprint Corporation, Transferee, For Consent to Transfer Control of Licenses and Authorizations*, File No. 0002031766, February 8, 2005, WT Docket No. 05-63, Exhibit 1 ("*Sprint/Nextel Merger Application*") at 39 and Attachment B at 12 – 13.

³ / See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004) ("*Cingular/AT&T Order*"); See also *Applications for the Transfer of Control of Licenses and Authorizations from Western Wireless Corporation to ALLTEL Corporation*, File No. 0002016468, January 24, 2005, WT Docket No. 05-50 ("*ALLTEL Merger Application*"), Exhibit 1: Description of Transaction and Public Interest Statement.

⁴ / *Cingular/AT&T Order*, ¶¶ 166 – 182.

⁵ / *Id.*

These practices harm consumers of wireless services by restricting the availability of roaming services and by keeping roaming rates artificially high. SouthernLINC Wireless therefore requests that the Commission take appropriate steps to ensure that the roaming practices described herein will not continue following the consummation of the proposed merger.

I. ROAMING IS AN ESSENTIAL COMPONENT OF THE COMMISSION'S REVIEW OF THE PROPOSED SPRINT/NEXTEL MERGER

Although this is not the first time that the Commission has been asked to review the issue of roaming within the context of a merger between two nationwide commercial mobile radio service (CMRS) providers,⁶ each proposed merger transaction involves unique facts and circumstances (as well as unique potential consequences) that require a case-by-case analysis of issues -- such as roaming -- that could affect consumers of wireless services.

In the case of Cingular and AT&T Wireless, the Commission found that consumers would likely not be harmed based on a variety of reasons, including: (i) "the continued presence of two nationwide and numerous regional carriers using GSM technology after the merger"; (ii) Cingular's statements, supported by publicly available evidence, that "it has been and, after the merger, will continue to be a net payor of roaming fees"; (iii) a lack of evidence or specific allegations that Cingular had taken steps in the past to charge unreasonable roaming rates; (iv) Cingular's practice of entering into roaming agreements with reciprocal roaming rates (along with the

⁶ / See, e.g., *Cingular/AT&T Order*.

expectation that this practice will continue); and (v) comments filed in support of the merger by a number of Cingular's roaming partners.⁷

However, as discussed in more detail in the sections below, the proposed merger of Sprint and Nextel presents facts and circumstances regarding roaming that, at least with respect to Nextel,⁸ are substantially different from those considered by the Commission in its review of the merger of Cingular and AT&T Wireless.

First, and most significant, is the fact that this merger involves a distinct customer segment served by very few providers: namely, customers for interconnected voice and "push-to-talk" ("PTT") digital dispatch services based on Motorola's proprietary Integrated Digital Enhanced Network (iDEN) technology. As the Commission noted in the *Cingular/AT&T Order*, there are numerous nationwide, local, and regional GSM and CDMA carriers. However, there are only three commercial iDEN carriers throughout the entire country: (1) Nextel, the only nationwide iDEN carrier; (2) Nextel's partially-owned affiliate Nextel Partners; and (3) SouthernLINC Wireless, a regional carrier that is the only iDEN carrier in the country not affiliated with Nextel.⁹

Due to its use of the iDEN platform, SouthernLINC Wireless' only potential domestic roaming partners are Nextel and Nextel Partners. However, unlike Cingular,

⁷ / See *Id.* at ¶¶ 167 – 182.

⁸ / Because SouthernLINC Wireless is technologically unable to roam with Sprint due to incompatible air interfaces, these Comments do not address roaming issues vis-à-vis Sprint. Nevertheless, relevant Sprint-related roaming information may become available through other filings submitted in this proceeding. SouthernLINC Wireless therefore reserves the option to address such Sprint-related roaming issues in subsequent phases of this proceeding.

⁹ / There are one or two small wireless carriers in the Western United States that apparently operate on the "Harmony" platform, a proprietary Motorola platform that is based on iDEN technology. As far as SouthernLINC Wireless is aware, none of these carriers are able to roam with Nextel or Nextel Partners.

neither Nextel nor Nextel Partners have any history or practice of entering into reciprocal roaming agreements with any domestic carriers other than each other.¹⁰ As described below, it has taken SouthernLINC Wireless years of effort to obtain even a rudimentary, non-reciprocal roaming agreement with Nextel, and Nextel Partners has refused to enter into any commercially reasonable roaming agreement with SouthernLINC Wireless whatsoever. Furthermore, neither Nextel nor Nextel Partners appear to have any intention to enter into a reciprocal roaming agreement with SouthernLINC Wireless in the first place, even though their own customers would benefit from the increased coverage that access to the SouthernLINC Wireless network would offer, thus demonstrating apparent market failure in the provision and availability of iDEN roaming services.

SouthernLINC Wireless is concerned that the current roaming problems described in these Comments could be even further exacerbated by Nextel's merger with Sprint. This merger would give Nextel access to even greater market power and a far broader customer base than it has right now, thus distancing Nextel even further from any possible incentive to revise its current roaming practices. Indeed, the Applicants explicitly state that one of the goals of the proposed merger is to reduce roaming costs, or, more specifically, Sprint's roaming costs.¹¹ In other words, this is a merger between a carrier with no incentive to roam and a carrier that sees this merger as a means of reducing its need for roaming. As a result, any roaming incentives that may currently exist for either company will likely be substantially reduced – if not entirely eliminated – as a result of this merger.

¹⁰ / *See Sprint/Nextel Merger Application* at 39.

¹¹ / *Id.*

This potential outcome is supported by the Applicants' silence as to their post-merger intentions regarding roaming agreements and roaming partners, in stark contrast to the strong and explicit commitments made by both Cingular and ALLTEL on roaming.

The current limited roaming agreement between SouthernLINC Wireless and Nextel will expire soon, and if Nextel's roaming practices should be carried over unchanged into the new merged company, SouthernLINC Wireless is concerned that it will be unable to obtain any future roaming agreement with the new, larger company, or that roaming will only be made available on a non-reciprocal basis and/or at unreasonably high rates that would have to be passed on to SouthernLINC Wireless subscribers.

The practices of Nextel and Nextel Partners already deprive their own customers of the ability to receive roaming service in areas of the Southeastern United States where they do not provide service, yet SouthernLINC Wireless does. Nextel and Nextel Partners further place severe constraints on the ability of SouthernLINC Wireless customers to roam by providing only basic interconnected voice roaming at rates that exceed industry standards, or – in the case of Nextel Partners – no roaming service at all. In contrast, the roaming services Nextel and Nextel Partners provide to each other's customers include dispatch and data roaming services in addition to interconnected voice. Furthermore, the many consumers of all three iDEN carriers who rely on or value the unique characteristics and capabilities of iDEN services, such as PTT digital dispatch, cannot replace these services by switching to a GSM or CDMA carrier.¹² These

¹² / The Applicants in fact rely on the lack of substitutability between Nextel's iDEN services and Sprint's CDMA services as a factor supporting their proposed merger. *See Sprint/Nextel Merger Application* at 25, 78 – 79, Attachment B at ¶¶ 86 – 106, 126, 156,

consumers are therefore being harmed by the roaming practices of Nextel and Nextel Partners, and this harm will be exacerbated by the proposed merger unless the Commission ensures that their interests are appropriately safeguarded.

II. UNIQUE CHARACTERISTICS OF THE iDEN CUSTOMER BASE

As the Commission noted in the *Cingular/AT&T Order*, the market for mobile telephony services in the United States is differentiated, and wireless carriers “do not offer a completely homogeneous service.”¹³ This proposed merger, unlike the merger of GSM-based carriers Cingular and AT&T Wireless, involves a distinct customer base served by very few providers: customers of interconnected voice and PTT digital dispatch services based on the iDEN air interface platform.

The iDEN networks and services of Nextel and SouthernLINC Wireless were designed and built from the ground up to provide trunked digital dispatch service that would allow customers to communicate with other individuals or within a group at the push of a button (hence the term “push-to-talk” or “PTT”), thus giving the customer’s telephone handset the ability to essentially function as a high-quality “walkie-talkie.” This PTT feature is highly valued by businesses and organizations, including public safety and other government agencies, because it enables customers to quickly establish private conferences on a one-to-one or one-to-many basis using a single handset that can also be used for phone, paging, and wireless data services. Recently, other carriers using

and Attachment C at ¶¶ 10 – 11. Although some CDMA carriers have begun introducing PTT services, there has thus far been a lack of market acceptance for them due to latency inherent in the CDMA-based PTT technology that results in delays in PTT call set-up and between conversation breaks. As discussed in Section IV of these Comments, *infra*, the Commission has previously acknowledged this difference between iDEN and other PTT services.

¹³ / *Cingular/AT&T Order* at ¶ 116.